

Interpreting Taxing Statutes # 50 - Long title

The long title may be used as an aid to construction but cannot of itself override the clear provisions of the Act.¹

SYNOPSIS

Significance of long title

- Object of the Act
- May be used for even for unambiguous provisions
- No overriding effect
- Potential unreliability
- *Rubro ad nigrum*

Significance of long title

It is now beyond doubt that the long title is part of an Act and may be used as an aid to construction.²

Object of the Act: The long title of an Act sets out the contents or purpose of the Act in general terms. As an aid to statutory interpretation, it is therefore likely to be of particular use in determining an enactment's purpose or aim. The long title is likely to be more useful than the short title since it is more comprehensive but it is not entirely reliable as an interpretive aid. The long title owes its presence to the procedural rules governing Bills and is not drafted as an interpreter's guide. Moreover, its drafting may be influenced by political and handling considerations to do with the Bill's legislative passage.

May be used for even for unambiguous provisions: It is sometimes suggested that the long title of an Act may be used only in cases where the provisions of the Act are ambiguous. Although the long title may be of use in cases of ambiguity there is no reason for limiting its use in this way. Said as follows:

¹ Bennion 2020 s 16.3

² Fielden (or Fielding) v Morley Corpn [1899] 1 Ch 1 cited in Bennion 2020 p

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‘In these days, when the long title can be amended in both-Houses, I can see no reason for having recourse to it only in case of an ambiguity – it is the plainest of all guides to the general objectives of a statute. But it will not always help as to particular provisions.’<sup>3</sup>

**No overriding effect:** However, the long title to an Act will not of itself be allowed to override its clear provisions. For example, the court declined to limit the application of the Wills Act 1861 of England s 3, to British subjects merely because of the long title, which was ‘An Act to amend the law with respect to wills of personal estate made by British subject’. Section 3 of the Act stated:

‘No will or other testamentary instrument shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.’<sup>4</sup>

**Potential unreliability:** The vestigial nature of long titles means that they are not amended when an Act is amended by subsequent Acts. Moreover, because of their mainly procedural character, mistakes are not infrequent in long titles, emphasizing their unreliability as an aid to construction.

***Rubro ad nigrum:*** Titles were freely used as an aid to the construction of early statutes. These statutes were written or printed in black, with the titles in red. To argue for the meaning of a text by reference to the title was said to be to argue a *rubro ad nigrum* (from the red to the black). Then, beginning in the seventeenth century, we find dicta to the effect that the long title is not part of the Act and should be disregarded. Since the

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<sup>3</sup> Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG (1975) AC 591 cited in Bennion 2020 p

<sup>4</sup> re Groos’ Estate cited in Bennion 2020 p

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emergence of parliamentary legislation in its modern form these dicta have ceased to apply.